



AGENDA DATE: 6/24/99

**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

**PETITION OF ROCKLAND ELECTRIC )  
COMPANY FOR APPROVAL OF THE )  
SALE OF ORANGE AND ROCKLAND )  
UTILITIES, INC.'S GENERATING )  
ASSETS AND CERTAIN RELATED )  
PROPERTY, A TRANSITION POWER )  
SALES AGREEMENT, AND A )  
PROTECTIVE ORDER )**

**ENERGY**

**SUMMARY ORDER INCLUDING  
PROTECTIVE ORDER**

**DOCKET NO. EM99030195**

**(SERVICE LIST ATTACHED)**

**BY THE BOARD:**

This Summary Order memorializes in summary fashion the action taken by the Board of Public Utilities ("Board") in this matter at its June 24, 1999 public agenda meeting with respect to the request by Rockland Electric Company ("RECo" or "Company") for the Board's approval of the sale of Orange and Rockland Utilities, Inc.'s (O&R) generating assets and certain related property. The Board will issue a more detailed Order in this matter which will provide a full discussion of the issues as well as the reasoning for the Board's determinations.

By Petition dated March 12, 1999, RECo requested that the Board approve the sale of all generating assets ("Generating Assets") and certain related property of O&R to affiliates ("Southern Energy Affiliates"<sup>1</sup>) of Southern Energy, Inc. ("Southern Energy") pursuant to Asset Sales Agreements ("ASAs"), and grant authority to take all actions contemplated by the ASAs.

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<sup>1</sup> Southern Energy Affiliates consists of: Southern Energy Bowline, L.L.C.; Southern Energy Lovett, L.L.C.; and Southern Energy NY-Gen, L.L.C.

In connection with the approval of the Generating Assets sales, RECo requested certain other relief including: approval of the allocation of sale proceeds, costs, and taxes to RECo and the proposed sharing of gains resulting from the sale among RECo shareholders and customers; approval of the proposed accounting for the transaction; certain determinations regarding Exempt Wholesale Generator ("EWG") status for the Southern Energy Affiliates; and a protective order. RECo requested approval pursuant to N.J.S.A. 48:3-7, the Board's June 16, 1998 Order Adopting Auction Standards, and/or any other applicable provisions of Title 48 or other applicable law.

In addition to the above, RECo has also requested that the Board waive its advertising requirements as set forth in N.J.A.C. 14:1-5.6(b). The Company argues that the advertising requirements do not apply in this matter, because O&R conducted the auction under the more specific and stringent standards of the Auction Standards Order. The Company argues that, even if the advertising requirements applied, O&R has substantially complied with them through the sending of preliminary bid packages to 175 potential bidders and through notices of the sale in two widely circulated newspapers.

RECo also requested that the Board approve the Transition Power Sales Agreement ("TPSA") between O&R and the Southern Energy Affiliates providing for O&R's purchase of installed electric generating capacity and energy to enable O&R and RECo to meet their requirements for their native basic generation service ("BGS") load customers.

In support of its Petition, RECo attached the following exhibits: Exhibit A (the Bowline Generating Station Sales Agreement); Exhibit B (the Bowline Adjacent Property Sales Agreement); Exhibit C (the Lovett Generating Station Sales Agreement); Exhibit D (the Gas Turbine and Hydroelectric Generating Station Sales Agreement); Exhibit E (the Transition Power Sales Agreement); Exhibit F (a copy of the Affidavit of J. Stephen Henderson, dated February 24, 1999, providing a market power analysis); Exhibit G (Affidavit of John A. Cavalier [of Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ")] dated January 28, 1999 including Exhibits JAC-1 [Confidential Information Memorandum ("Memorandum")] and JAC-2 [summary of generation auctions at pricing]; Exhibit H (lists and information regarding bidders and bids); Exhibit I (Affidavit of James A. Ward, Vice President and Comptroller, Southern Energy, Inc., dated February 12, 1999 regarding environmental compliance); Exhibit J (certified copies of the resolutions of the board of directors of Southern Energy, O&R, and Consolidated Edison Company of New York, Inc. ("Con Edison") authorizing the transaction); Exhibit K (pro forma journal entries for O&R and RECo to record the transaction); and Exhibit L (RECo's Estimated Gain on the sales of O&R's Generating Assets).

RECo also supplied responses to discovery requests from Board Staff ("Staff") and the Division of the Ratepayer Advocate (Advocate). On June 16, 1999, Board Staff requested comments from the Advocate by June 22, 1999, with Company comments requested by June 23, 1999. The Advocate and RECo provided their comments by letters

dated June 17, 1999, and June 18, 1999, respectively.

Based on our review of the record in this proceeding, as well as comments submitted by the Advocate and the Company, the Board is satisfied that it is appropriate to render a decision at this time in order to enable the sale of the generating assets and certain related property to be concluded in a timely manner. The Board notes that this decision is also intended to facilitate the consummation of the merger between O&R and Consolidated Edison Company of New York, Inc. which is, according to Board Staff, contingent upon the successful closing of the sale of the generating assets.

The Board **FINDS** the conduct of the sale of O&R's generating assets and certain related property to be in the public interest and in accordance with the Board's Order Adopting Auction Standards, dated June 16, 1998, in Docket No. EX94120585Y et. al. We further **FIND** that the approval criteria for the sale, as set forth in Sections 13 and 14 of the Electric Discount and Energy Competition Act of 1999, P.L. 1999, c .23, have been met. We therefore **HEREBY APPROVE** the sale of all of O&R generating Assets and certain related property to Southern Energy Affiliates pursuant to the terms of the ASAs, and **HEREBY GRANT** RECo authority to take all actions contemplated by the ASAs. In approving the sale we note that the New York Public Service Commission approved a similar request by O&R at its agenda Meeting on June 24, 1999. As part of our approval, we **HEREBY WAIVE** the advertising requirements as set forth in N.J.A.C. 14:1-5.6(b), as this requirement has been fulfilled by the Company's compliance with the aforementioned Auction Standards and Review Criteria.

In reviewing the allocation of sale proceeds, costs, and taxes to RECo and the proposed sharing of gains resulting from the sale among RECo shareholders and customers, the Board agrees with the Advocate that these issues require further review by the parties and, therefore, **FINDS** that any resolution of these issues at this time would be premature and that these issues should be addressed in the context of the stranded costs, rate unbundling and restructuring proceedings currently pending before us.

We similarly **FIND** that approval at this time of the proposed accounting for the transaction is premature, and that we will defer any decision on this issue so as to allow the Board Staff and the Advocate to further review this issue.

As part of our approval, the Board has reviewed the criteria for determining that allowing the generating assets be "eligible facilities" pursuant to Section 32 of the Public Utility Holding Company Act (PUHCA). RECo asserts that such a determination will allow Southern Energy Affiliates to become EWGs. The specific criteria are that said approval: (1) will benefit New Jersey consumer; (2) is in the public interest; and (3) does not violate State law. As part of our review, the Board **FINDS** that, based on an affidavit provided by the Company (Exhibit F) , the sale of the generating assets to Southern Energy Affiliates will not adversely affect the availability or reliability of the electric supply to

RECo's customers or to any other customers in the region and that there will not be any market power concerns in this regard. We also **FIND** that, again based on the affidavit provided by the Company, the sale of the generating assets to Southern Energy Affiliates will not result in any concern for the exercise of vertical market power by RECo, nor will it create horizontal market power for Southern Energy Affiliates. For the reasons give, the Board **HEREBY DETERMINES** that allowing the generating assets to become eligible facilities pursuant to Section 32 of PUHCA will benefit New Jersey consumers, is in the public interest and does not violate State law.

As part of the sale process, O&R has entered into a TPSA with Southern Energy Affiliates to enable O&R and RECo to purchase installed capacity and energy from Southern Energy Affiliates through October 31, 2000. The Advocate has expressed a concern that the TPSA needs to be more thoroughly reviewed to ensure that RECo's ratepayers are adequately protected as to the price of basic generation service. The Company has stated a deferral of the approval of the prudence of the TPSA can be deferred without impacting the sale of the generating facilities and that the this issue can be decided in the context of RECo's restructuring proceeding. The Board shares the Advocate's concern and **FINDS** that the terms and conditions of the TPSA require further scrutiny by the parties. We therefore **HEREBY APPROVE** the TPSA for the purpose of facilitating the sale of the generating assets and defer any determination regarding the prudence of the terms and conditions of the TPSA to the Company's restructuring proceeding.

Finally, the Company has requested that the Board grant a Protective Order with respect to certain categories of information consisting of names of potential and actual bidders Phases I and II of the auction process, bid submissions and a "Memorandum" setting forth certain business and strategic information of O&R. We **FIND** the Company's request to be reasonable and **HEREBY GRANT** a Protective Order, pursuant to N.J.A.C. 17:27-14.1(b), with regard to the names of potential and actual bidders, bid submissions and the aforementioned Memorandum.

**DATED: 6/24/99**

**BOARD OF PUBLIC UTILITIES  
BY:**

**SIGNED**  
**HERBERT H. TATE**  
**PRESIDENT**

**SIGNED**

**CARMEN J. ARMENTI  
COMMISSIONER**

**\_\_\_\_ SIGNED \_\_\_\_  
FREDERICK F. BUTLER  
COMMISSIONER**

**ATTEST:      SIGNED \_\_\_\_\_  
MARK W. MUSSER  
SECRETARY**